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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 1046

EDMOND J. HAMILTON and JOHN L. DATENHOFF,
Appellants,

v.

JOHN J. McKEITHEN, GOVERNOR OF THE STATE OF LOUISIANA, *Appellee,*

AMERICAN RICE GROWERS COOPERATIVE ASSOCIATION, LAKE CHARLES MARITIME ASSOCIATION, GREATER LAKE CHARLES CHAMBER OF COMMERCE, WEST CALCASIEU CHAMBER OF COMMERCE, JESSE M. KNOWLES, A. C. CLEMONS, JR., HARRY M. HOLLINS, ROBERT G. JONES, WILLIAM L. McLEOD, JR., WILLIAM S. BOYD, and CONWAY LEBLEU, *Intervenors-Appellees.*

On Appeal From the Supreme Court of the State of Louisiana

MOTION TO DISMISS OR AFFIRM

The appellees, JOHN J. McKEITHEN, Governor of the State of Louisiana, AMERICAN RICE GROWERS COOPERATIVE ASSOCIATION, LAKE CHARLES MARITIME ASSOCIATION, GREATER LAKE CHARLES CHAMBER OF COMMERCE, WEST CALCASIEU CHAMBER OF COMMERCE,

JESSE M. KNOWLES, A. C. CLEMONS, JR., HARRY M. HOLLINS, ROBERT G. JONES, WILLIAM L. MCLEOD, JR., WILLIAM S. BOYD, and CONWAY LEBLEU, move the court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of the State of Louisiana on the ground that the case was not timely docketed and on the further ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

I.

THE STATE LAW INVOLVED AND THE NATURE OF THE CASE

A. The State Law

This appeal raises the question of the validity of Article 14, Section 30.2(b) of the Constitution of the State of Louisiana, providing for the method of selecting members of the Board of Commissioners of the Lake Charles Harbor & Terminal District.

The Lake Charles Harbor & Terminal District is a political subdivision of the State of Louisiana created by Act 67 of 1924, now Louisiana Revised Statutes 34:201, et seq. The governing body of the district is the Board of Commissioners and its purpose is the operation of the Port of Lake Charles. The powers of the Board of Commissioners (commonly known as the Lake Charles Dock Board) are set out in Louisiana Revised Statutes 34:203. The creation of the Lake Charles Harbor & Terminal District was ratified by constitutional amendment proposed by Act 55 of 1924 and adopted by the people on November 4, 1924. This constitutional provision is now Article 14, Sec-

tion 30.2(a) of the Constitution of the State of Louisiana, which reads as follows:

> "The act passed by the Legislature of 1924 creating the Lake Charles Harbor & Terminal District shall be deemed and held to be ratified, confirmed and put into operation by the adoption of this constitutional amendment in the manner provided by law."

The present method of selecting members to the Board of Commissioners of the Lake Charles Harbor & Terminal District was proposed as a constitutional amendment by Act 708 of 1968, which was adopted by the people on November 5, 1968, and which is now Article 14, Section 30.2(b) of the Constitution of the State of Louisiana. It is this latter provision providing for the method of selecting members to the Board of Commissioners which is alleged to be contrary to the Constitution of the United States and particularly the due process and equal protection clauses of the Fourteenth Amendment.

The Louisiana constitutional provision here under attack provides that the Board of Commissioners shall consist of five members and that vacancies on the Board of Commissioners shall be filled by the Governor from a list of three nominees submitted successively by the American Rice Growers Cooperative Association, the Lake Charles and Vicinity Central Trades & Labor Council, AFL-CIO, the Lake Charles Maritime Association, the Greater Lake Charles Chamber of Commerce and the West Calcasieu Chamber of Commerce as one organization, and the state senators and representatives in the legislature representing the Parish of Calcasieu.

B. The Proceedings Below

Appellants filed this suit against John J. McKeithen, Governor of the State of Louisiana, in the Nineteenth Judicial District Court of the State of Louisiana for the Parish of East Baton Rouge, seeking to have that court declare Article 14, Section 30.2(b) of the Constitution of the State of Louisiana to be "illegal and unconstitutional", and seeking to enjoin the defendant from filling the vacancy then existing on the Board of Commissioners of the District under the procedures set out in the constitutional provision. Four of the nominating groups provided for in the constitutional provision under attack intervened in the suit and joined the Governor in defending the suit and the validity of the constitutional provision in question. The trial court declared the provision unconstitutional whereupon the defendant and intervenors appealed to the Supreme Court of the State of Louisiana.

In a unanimous decision, the Supreme Court of the State of Louisiana reversed the trial court and held the constitutional provision in question to be valid. Plaintiffs' application for rehearing was refused by the Supreme Court of the State of Louisiana on October 8, 1969. *Hamilton* v. *McKeithen*, 254 La. 683; 226 So.2d 494 (1969). Plaintiffs filed a notice of appeal to this Court on December 10, 1969. The case was docketed in this Court on January 8, 1970.

II.

ARGUMENT

A. Appellants Did Not Docket This Case Within the Delay Provided by Rule 13 (1)

As appellants state in their notice of appeal to this Court, their appeal is "from the final judgment of the Supreme Court of the State of Louisiana entered in this suit on the 8th day of October, 1969 (said judgment having been initially rendered herein on the 8th day of June, 1969, and finality thereof having been suspended by the timely filing of an application for rehearing, which application for rehearing was denied on October 8, 1969)". The notice of appeal was timely filed but this Court's Rule 13(1) further requires that appellants docket the case within ninety (90) days after entry of the judgment appealed from, i.e. not later than January 6, 1970. This case was not docketed until January 8, 1970. Appellants did not secure an extension of time from a justice of this Court as authorized by the rule.

This Court has discretion to overlook a failure to comply with its rules. However, in this case, appellants' jurisdictional statement is silent on the subject of timeliness of docketing and (to appellees' knowledge) no explanation accompanied the untimely docketing of appeal. In the case of *Pittsburgh Towing Company* v. *Mississippi Valley Barge Line Company*, 385 U.S. 32, 87 S.Ct. 195 (1966), this Court dismissed an appeal under similar circumstances noting that "if there are to be rules, there must be some limit to our willingness to overlook their violation". It is to be noted that in the case of *Johnson* v. *Florida*, 391 U.S. 596, 88 S.Ct. 1013 (1968), this Court did not dismiss the appeal although the case had not been timely

docketed. However, *Johnson* was a criminal case and it is submitted that there is more reason to overlook a failure to comply with court rules where an individual's liberty is at stake than there is in a civil case such as *Pittsburgh Towing Company* and the instant case.

Appellees are informed that appellants will file a supplemental jurisdictional statement claiming that the record was delayed or missent in transit. It is submitted that it is the responsibility of the appellants to see that the record is delivered to the Clerk of this Court within the delay allowed or to secure an extension of time from a justice of this Court in the event of mishap. Such an excuse as this is no more valid than the excuse claimed in *Pittsburgh Towing Company* that "delay was occasioned by a misunderstanding between counsel for appellant" and it should be similarly rejected.

Should this Court choose to overlook appellants' failure to timely docket the case, the appeal should nevertheless be dismissed (or the judgment below affirmed) because of the unsubstantiality of the questions presented for the reasons hereinafter set forth.

B. The "One Man-One Vote" Doctrine Has No Relevance to This Case

The state constitutional provision here under attack provides that the governing board charged with operation of the Port of Lake Charles is to be composed of members appointed by the Governor from lists of nominees submitted by certain nominating groups, some of which are unofficial organizations. There are substantial and rational relations between the nominating groups and the functions which the ultimate ap-

pointees are to perform and accordingly the selection procedure is valid under the traditional tests of constitutionality, all as shown by Section C, below. Because of the fact that the appointive procedure here under attack so clearly meets the tests laid down in the jurisprudence cited in Section C below, appellants seek to rely on the "one man-one vote" doctrine established by this Honorable Court in *Reynolds* v. *Sims*, 377 U.S. 533, 84 S.Ct. 1362 (1964).

The "one man-one vote" doctrine clearly has no relevance to this case under the holding in *Sailors* v. *Board of Education of the County of Kent*, 387 U.S. 105, 87 S.Ct. 1549 (1967).

This Honorable Court found that the method of selecting members to the Kent County Board of Education was appointive rather than elective and that the functions of the board were administrative rather than legislative. It was held that where these two factors are present, the principle of "one man-one vote" has no relevancy and the constitutionality of the selection procedure was upheld.

The following language of this court is pertinent:

> "We find no constitutional reason why state or local officers of the nonlegislative character involved here may not be chosen by the governor, by the legislature, *or by some other appointive means* rather than by an election. Our cases have, in the main, dealt with elections for United States Senator or Congressman.
>
> * * *
>
> "They were all cases where elections had been provided and cast no light on when a State must provide for the election of local officials.
>
> * * *

"The science of government is the most abstruse of all sciences; if, indeed, that can be called a science which has but few fixed principles, and practically consists in little more than the exercise of a sound discretion applied to the exigencies of the state as they arise. It is the science of experiment.

"When we stated . . . the state legislatures have constitutional authority to experiment with new techniques, we were talking about the Due Process Clause of the Fourteenth Amendment, . . .

"*The Michigan system for selecting members of the county school board is basically appointive rather than elective.* We need not decide at the present time whether a state may constitute a local legislative body through the appointive rather than the elective process. . . . We do not have that question here, *as the County Board of Education performs essentially administrative functions; and while they are important, they are not legislative in the classical sense.*

"*Viable local governments may need many innovations, numerous combinations of old and new devices,* great flexibility in municipal arrangements to meet changing urban conditions. *We see nothing in the Constitution to prevent experimentation.* At least as respects nonlegislative officers, *a State can appoint local officials or elect them or combine the elective and appointive systems as was done here. . . . Since the choice of members of the county school board did not involve an election and since none was required for these nonlegislative offices, the principle of 'one man, one vote' has no relevancy.*" (Emphasis added.)

Certainly the Lake Charles Dock Board is appointive rather than elective. The *Sailors* case dealt with a procedure whereby the elected local school boards

selected delegates who in turn selected the members of the county board. This Court, in *Sailors,* recognized that this was a combination of "the elective and appointive systems" but concluded that it was "basically appointive rather than elective" so that the "one man-one vote" doctrine was irrelevant. In other words, the closer any selection procedure comes to being elective, the more likely it is that the "one man-one vote" doctrine will be applicable. The obviously appointive procedure for selecting members to the Lake Charles Dock Board meets this test of the *Sailors* case more clearly than the situation which was before this Court in *Sailors.*

The Board of Commissioners of the Lake Charles Harbor and Terminal District is a single purpose entity with its only function being the operation of the Port of Lake Charles and matters incidental thereto. Although the operation of the port has an indirect effect upon the people living within the harbor and terminal district as well as on the people of the surrounding area, it certainly does not have the direct vital effect upon the people which results from the activities of a county school board charged with responsibility for the education of their children. If the activities of the Kent County Board of Education were administrative rather than legislative, then it is patently obvious that the activities of the Board of Commissioners of the Lake Charles Harbor and Terminal District are likewise administrative rather than legislative. The decision of the Louisiana Supreme Court to the effect that the board is an administrative body is not seriously challenged by appellants in their jurisdictional statement. Accordingly, it is clear that both requirements of *Sailors* are present in this case and the "one man-one vote" doctrine has no relevance.

The case of *Avery* v. *Midland County*, 390 U.S. 474, 88 S.Ct. 1114, 20 L.Ed. 2d 45 (1968), relied on by appellants, is consistent with *Sailors* and cites it with approval. It is clearly distinguishable from the instant case. *Avery* was a reappointment suit against the Midland County Commissioners Court, the general governing body of the county. This body consisted of five members, one *elected* at large and four *elected* by districts. One district included the city of Midland and contained 95% of the county's population. The remaining three districts (which elected a majority of the body) contained only five percent of the population. Reapportionment was ordered. The "one man-one vote" rule was applicable because both tests laid down in *Sailors* were met, whereas neither test is met in ~~our~~ case. The Commissioner's Court in *Avery* was an elective body whereas the Kent County Board of Education and the Lake Charles Dock Board are appointive. The Commissioner's Court was a legislative body, whereas the Kent County Board of Education and the Lake Charles Dock Board are administrative bodies.

In addition to *Avery*, appellants rely on the case of *Kramer* v. *Union Free School District No. 15*, — U.S. —, 89 S.Ct. 1886 (1969), and to a lesser extent on *Cipriano* v. *City of Houma*, — U.S. —, 89 S.Ct. 1897 (1969).

In the *Kramer* case, the plaintiff sought the right to vote in the election for the local board of Union Free School District 15 of the State of New York. This Honorable Court carefully pointed out that New York provides three methods of school board selection and that only the last of those three methods was involved in the case. In some large city districts, the school

board is appointed by the Mayor or City Council. This situation was not before the court. Had it been, the case could have had a bearing on the Lake Charles Dock Board situation.

At least one of the large city school districts, that of the City of New York, is appointed by the Mayor from a list of nominees submitted by a selection board consisting of the heads of the three universities located in New York City and the presidents of eight other organizations representing educational, civic, business, labor and professional groups interested in city affairs, including education. These organizations include the New York Central Trade and Labor Council and the Commerce and Industry Association of New York, Inc. See *Lanza* v. *Wagner*, 183 NE 2d 670 (New York, 1962); appeal dismissed 371 U.S. 74, 83 S.Ct. 177 (1962); certiorari denied 371 U.S. 901, 83 S.Ct. 205 (1962). The *Kramer* case does not deal with this procedure for choosing members for the New York City School Board and does not cast any doubt whatsoever on the validity of such procedure which is substantially similar to the procedure for selecting members to the Lake Charles Dock Board. It is to be noted that in the *Lanza* case, the highest court of the State of New York held the statute to be constitutional and this Honorable Court refused to review that decision.

A second method for selecting school boards is employed in certain New York cities primarily those with less than 125,000 residents. In these districts, the school board is elected at general municipal elections in which all qualified city voters may participate. Again this method of selecting New York school boards was not before the court.

In other districts, such as the one involved in the *Kramer* case, which are primarily rural and suburban, "the school board is *elected* at an annual meeting of qualified school district voters." (89 S.Ct. 1886, 1887, emphasis added) However, in these elections a person otherwise eligible to vote in general elections is disqualified unless he is (1) the owner or lessee of taxable real property located in the district, or (2) the spouse of one who owns or leases qualifying property, or (3) a parent or guardian of a child enrolled for a specified time during the preceding year in a local district school. The plaintiff in the *Kramer* case was ineligible to vote in these elections because he was a bachelor living with his parents and therefore was excluded from those permitted to vote in the election.

This court stated that that "state apportionment statutes, which may *dilute* the effectiveness of some citizens' votes, receive close scrutiny in this court, *Reynolds* v. *Sims, supra.*" See *Avery* v. *Midland County*, 390 U.S. 474, 494, 88 S.Ct. 1114, 1125, 20 L.Ed. 2d 45 (1968). No less rigid an examination is applicable to statutes *denying* the franchise to citizens who are otherwise qualified by residence and age." (89 S.Ct. 1886, 1889) This Court concluded that the selective distribution of the *franchise* involved in the case before it permitted "inclusion of many persons who have, at best, a remote and indirect interest, in school affairs and on the other hand, exclude others who have a distinct and direct interest in the school meeting decisions." (89 S.Ct. 1886, 1892) Accordingly this Honorable Court reversed the decision of the lower court which had upheld the validity of the statute and in effect required that the plaintiff be permitted to

vote in the election for members of the school board of Union Free School District No. 15. It can be seen that *Kramer* is merely an extension of the "One Man-One Vote" doctrine that this Court has evolved over recent years. If a person's vote may not be diluted merely because he lives in an urban rather than a rural area (as in *Reynolds* v. *Sims*), then he may not be denied the right to vote in school elections simply because he does not own or lease property or have children in school. The *Kramer* decision is clearly limited to the right to *vote* in an *election*. Every one of the one man-one vote decisions has dealt with an election and have clearly been limited to elections.

The case of *Sailors* v. *Kent Board of Education*, *supra*, clearly held that an administrative body, such as the Lake Charles Dock Board may be chosen by appointment rather than by election and when such a body is selected by the appointive process, the "One Man-One Vote" doctrine has no relevancy. As shown by the quotation from the *Kramer* case at page 15 of appellants' jurisdictional statement, the rule laid down in *Sailors* remains the law and was cited with approval:

> "States do have latitude in determining whether certain public officials shall be selected by appointment and whether various questions shall be submitted to the voters. In fact, we have held that where a county school board is an administrative, not legislative, body, its members need not be elected. Sailors v. Kent Board of Education, 387 U.S. 105, 108 (1967). However, '*once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Production Clause of the Fourteenth Amendment.*'" (Emphasis supplied by appellants in their jurisdictional statement)

The entire argument made by the appellants is based on the false premise which they state at page 14 of their jurisdictional statement as follows: "In the present case although an appointment is made by the Governor, a franchise has been granted to a limited number of private groups to designate the panels from which the Governor must appoint." Clearly no "franchise" has been granted in this case. A franchise is only granted for an election and it is patently obvious that the members of the Lake Charles Dock Board are chosen by appointment, not by election. A simple reading of the above quotation makes it crystal clear that when this court speaks of "the franchise" being granted it is talking about an office being made elective rather than appointive. This court first says that the states have latitude in determining "whether certain public officials shall be selected by election or chosen by appointment". It then adds, "once the franchise is granted to the electorate", that is, once it is decided by the state that the office shall be elective rather than appointive, then "lines may not be drawn which are inconsistent with the Equal Protection Clause" in determining who can vote in the election. Not only does the context in which the word "franchise" was used show that the court was talking about an election, by simple definition the word franchise is applicable only to an election and the right to vote therein. Black's Law Dictionary defines franchise in this sense as follows: "The right of suffrage; the right or privilege of voting in public elections." Black's Law Dictionary, Fourth Edition, page 786. Corpus Juris Secundum defines franchise in this sense as "The right or privilege of qualified elector or voter to cast his ballot freely in favor of the man of his choice in an election authorized by law to be held." 29 Corpus

Juris Secundum 28. It would be ridiculous to say that the members of the Lake Charles Dock Board who are appointed by the Governor from panels furnished by a cross section of organizations interested in the operation of the Port of Lake Charles are chosen by a "public election" or "an election authorized by law to be held". Accordingly, appellants' position that a "franchise" has been granted is untenable and the remainder of their argument based on that premise falls with it.

Appellants (at page 12 of their jurisdictional statement) quote the *Kramer* case as holding that "any unjustifiable discrimination in determining who may participate in political affairs or in the selection of public officials undermines the legitimacy of representative government." The meaning of this sentence is clearly determined by reading the two preceding sentences: "'[S]ince the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the *right of citizens to vote* must be carefully and meticulously scrutinized.' This careful examination is necessary because statutes distributing the *franchise* constitute the foundation of our representative society." (Emphasis added and citations omitted). Clearly, when this Court is talking about the right to "participate in political affairs or in the selection of public officials" it is talking about the right to cast a ballot in an election held for the purpose of determining political questions or electing public officials.

The appellants also rely on *Cipriano* v. *City of Houma*, — U.S. —, 89 S.Ct. 1897 (1969). The *Cipriano* case is even more clearly distinguishable

from the instant case than is the *Kramer* case. The *Cipriano* case involved an election to authorize the issuance of revenue bonds to be paid from the operation of public utilities. Under the statute in question, only property owners were allowed to vote. The plaintiff was not a property owner, but claimed that there was no rational basis for excluding him from the franchise. This Honorable Court held the statute unconstitutional. It held that the exclusion of non-property owners was not necessary to promote a compelling state interest and that it was immaterial that "the question scheduled for the election need not have been submitted to the voters." Accordingly, the case follows *Kramer* to the effect that once an election is called, persons otherwise qualified to vote must be allowed to participate in the election unless their "exclusions are necessary to promote a compelling state interest." *Cipriano,* like all of the other "One Man-One Vote" decisions, dealt with an election and the right to vote and the principles stated therein are applicable only to elected offices. They have no relevancy to appointive offices, such as the Lake Charles Dock Board.

C. The Decision of the Supreme Court of Louisiana Is Clearly Correct and No Substantial Federal Question Is Presented in This Appeal

Once it is decided that the "One Man-One Vote" doctrine is inapplicable, it is crystal clear that there is no constitutional prohibition against the delegation of such powers as those involved here to a board selected under the procedures here attacked. It has been so held by the highest appellate court of the State of New York in a decision which this Honorable Court refuses to review. *Lanza* v. *Wagner,* 183 NE 2d 670

(New York, 1962), appeal dismissed 371 U.S. 74, 83 S.Ct. 177 (1962), certiorari denied 371 U.S. 901, 83 S.Ct. 205 (1962). The *Lanza* case was an attack upon a statute which shortened the terms of members of the Board of Education of the City of New York and provided for the appointment by the mayor of new members of the board as well as of their successors from a list of nominees to be submitted to him by a selection board consisting of the heads of the three universities located in New York City, and the presidents of eight other organizations representing educational, civic, business, labor and professional groups interested in city affairs, including education. These organizations include the New York Central Trades and Labor Council and the Commerce & Industry Association of New York, Inc. The court held that the statute was constitutional. It noted that the technique of designating a representative panel of responsible and knowledgeable persons to assist the appointing power by submitting a list of eminently qualified nominees from among whom the appointments were to be made was by no means a novel one in New York (nor is such a procedure novel in Louisiana). Whether the selection board was regarded as private or public, the Court could perceive of no constitutional bar to the legislative designation of a nominating panel made up of people representing a knowledgeable cross section of the city, either active or vitally interested in the educational life of the city, who could reasonably be expected to present to the mayor on an objective and nonpartisan basis, the names of individuals exceptionally qualified for service on the Board of Education.

The rule as to how far a state may go in permitting nominations of public officials from private organiza-

tions is well stated in the case of *Ashmore* v. *Greater Greenville Sewer District*, 44 SE 2d 88 (South Carolina, 1947). The statute in question in that case provided for the creation of a political subdivision for the erection, maintenance and management of an auditorium and issuance of bonds therefor through a board of trustees which would be composed of certain political officers and representatives from a number of organizations including the Lions, Rotary, Kiwanis, Exchange, Optimist, and Altrusa Clubs, all such representatives to be directly elected to the board by their respective groups. The court found that the logical and reasonable solution of the problem was to follow the rule that where there is little or no relation between the unofficial persons, bodies or organizations to whom the power of nomination, appointment or election is attempted to be delegated, and the law to be administered, the legislative provisions so purporting are invalid because of such lack of substantial and rational relations between the appointive or elective power and the function of government which the appointees or electees are to perform. Departure from this concept, the court stated, would be discriminatory to the degree of violation of the "equal protection" and "due process" clauses of the *state* constitution. The court could find no substantial or rational relationship between the various organizations named in the statute and the construction and operation of a public auditorium, and thus found the statute unconstitutional.

The above rule was again applied by the same court in the case of *Floyd* v. *Thornton*, 68 SE 2d 334 (South Carolina, 1951). That case involved a statute providing for the appointment of members of a board of bank

control from names recommended by the state bankers association. The court said that they could conceive of no case where there would be a more rational and substantial relation to the law to be administered by the appointees than that involved in the statute under consideration, the state bankers association obviously being an organization especially qualified for the selection of men to be appointed to the board of bank control. The nominating groups in the constitutional amendment under attack in this case have an equally strong relationship to the purposes and powers of the Lake Charles Dock Board.

The nationwide jurisprudence on this problem is covered in an annotation on the validity of delegation to private persons or organizations of power to appoint or nominate to public office in 97 A.L.R. 2d 361, et seq. Suffice it to say that the vast weight of authority is that the delegation of such nominating powers to private organizations of the type provided for in this constitutional amendment is perfectly valid under the constitutional provisions of the United States and the various states.

There are such substantial and rational relations between the five groups charged with furnishing nominees for appointment to the Lake Charles Dock Board and the functions of government performed by the board (operation of the Port of Lake Charles) that this appointive process unquestionably meets the traditional tests of constitutional validity set out above.

(a) The American Rice Growers Cooperative Association is composed of the rice producers of the area surrounding and served by the Port of Lake Charles. The bulk of the rice shipped by said producers is

shipped through the Port of Lake Charles and rice shipments constitute fifty per centum (50%) or more of the dry cargo shipped through the Port of Lake Charles by all users thereof. Said organization actively sponsored the construction of the Calcasieu Deep Water Channel and the creation of the Lake Charles Harbor and Terminal District and has always maintained a keen interest in the operation of the port and in the related activities of the board, because of the value to its members of the port's facilities, which make available foreign markets and lower transportation rates for their produce. (Exhibits D-2 and D-3 in evidence herein; see TR 67-72)

(b) The Lake Charles and Vicinity Central Trades and Labor Council, AFL-CIO, is an organization comprising most of the labor unions of Calcasieu Parish. Accordingly, said organization represents most of the working men of Calcasieu Parish. The economic well-being of Calcasieu Parish and its industrial development and resulting labor needs are in a large measure dependent upon the success and efficient operation of the port, and accordingly the well-being of the working men of Calcasieu Parish is inextricably related to the operation of the port and the related activities of the board.

(c) The Lake Charles Maritime Association is a voluntary association of all persons engaged at Lake Charles, Louisiana, either as principal, agent or employee-representative of all concerns engaged in the businesses of shipping, forwarding, stevedoring, chartering and brokering of commodities and cargo through the Port of Lake Charles, Louisiana. The association is daily in direct contact with the managing and operating personnel of the port and with its physical facili-

ties. Being in the businesses which generate and develop the traffic and commerce of the port and the district, the members of this association have and maintain vital concern with reference to the management of the district. Necessarily, they have peculiar expertise and knowledge (which is made available to the port authorities) concerning the maintenance, upkeep, operation and expansion of the port facilities and concerning the advantageous promotion and development of the traffic and commerce that flow through the port, all of which is within the function and management of the Board of Commissioners of the Lake Charles Harbor and Terminal District. (Exhibits D-1 and LCM-1 in evidence herein; see TR 67-72)

(d) The Greater Lake Charles Chamber of Commerce is composed of the business and professional people of Lake Charles and the vicinity within the Lake Charles Harbor and Terminal District. Membership in the Chamber is open to all such business and professional people of the area. The Chamber took a leading part in securing the construction of the Lake Charles Deep Water Channel and the creation of the harbor and terminal district. The Chamber has continued to take a strong interest in the operation of the port and the related activities of the board because of the port's importance as an essential factor in the growth and development of the vicinity and to the welfare of its citizens. Accordingly, it has at all times maintained a standing and functioning committee solely devoted to the activities of the harbor and terminal district. (Exhibit D-4 and D-5 in evidence herein; see TR 67-72)

The West Calcasieu Chamber of Commerce is composed of the business and professional people residing

or in business in that portion of Calcasieu Parish situated west of the Calcasieu River. Membership in the chamber is open to all such business and professional people. The welfare of the business and professional community of West Calcasieu, as well as of Lake Charles and vicinity, is tied to the success of the port, inasmuch as the economic well-being of the entire area is in a large measure dependent upon the success and efficient operation of the port. (Exhibit D-6 in evidence herein; see TR 67-72)

(c) The state senators and representatives in the legislature representing the Parish of Calcasieu are elected from senatorial and representatives districts, each of which includes the entire area of the Lake Charles Harbor and Terminal District. Accordingly, they represent all of the people of the district as well as the people of the surrounding area and are charged with the duty to assist, legislatively and otherwise, in providing for the efficient operation of the port. The welfare of the constituents of the said state senators and representatives is tied to the success of the port.

Although the nominating procedure here under attack would clearly meet the test laid down in the *Ashmore* case (as well as of the other cases discussed above), it is interesting to note that in *Ashmore* the private organizations chose the members of the board directly. In our case the private organizations can only submit nominees from among whom the governor makes the appointemnt. The annotation at 97 ALR 2d 361 et seq. deals with attacks on both the *appointive procedure* and the *nominative procedure*. Although there are a few cases cited in that annotation where the *direct appointment* procedure was struck down as in *Ashmore*, all of the cases upheld the validity of the

nominative procedure with one exception. The only exception was in Florida where there was a provision of the state constitution which required those officials to be chosen by election by the people or by appointment by the governor. It was held that under this provision, the legislature could not limit the governor's power of appointment. Of course, there is no such provision in the Louisiana constitution but, on the contrary, the appointive procedure here under attack is written into the constitution. Thus, the Florida cases are not pertinent here, whereas the other cases which have, without exception, held such nominating procedures to be valid, are pertinent. See 97 ALR 2d 372-378.

III.

CONCLUSION

Appellants herein did not timely docket this case. It is submitted that their appeal should be dismissed for this reason.

Moreover, the procedure of selecting members of boards and commissions from lists of nominees submitted by unofficial organizations is constitutionally valid where there are substantial and rational relations between the nominating groups and the law to be administered under the authorities cited in 97 ALR 2d 361. There are such substantial and rational relations in this case. Nothing in the *Reynolds, Avery, Kramer* and *Cipriano* cases prohibits the selection of members to the Lake Charles Dock Board by such procedures. On the contrary, the *Sailors* decision is clear authority for the proposition that the "One Man-One Vote" doctrine has no relevance to this case.

WHEREFORE, appellees respectfully submit that the questions upon which this cause depend are so un-

substantial as not to need further argument, and appellees respectfully move the court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Supreme Court of the State of Louisiana.

Respectfully submitted,

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